

MARTHA COAKLEY  
ATTORNEY GENERAL

# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION  
10 MECHANIC STREET, SUITE 301  
WORCESTER, MA 01608

(508) 792-7600  
(508) 795-1991 fax  
[www.mass.gov/ago](http://www.mass.gov/ago)

September 19, 2013

Sandra J. Burgess, Town Clerk  
Town of Amherst  
4 Boltwood Avenue  
Amherst, MA 01002

**RE: Amherst Annual Town Meeting of May 6, 2013 – Case # 6838**  
**Warrant Articles # 30, 31, 32 (A3), 32 (B), 33, 34, 35, and 36 (Zoning)**  
**Warrant Article # 29 (General)**

Dear Ms. Burgess:

**Articles 29, 30, 31, 32 (Part A3), 32 (Part B), 33, 34, 35, and 36** - We approve the amendments adopted under these Articles, and the map amendments adopted under Article 36, at the May 6, 2013 Amherst Annual Town Meeting. Our comments on Article 29 are provided below.

**Article 29** - The amendments adopted under Article 29 add to the Town's general by-law a new "Residential Rental Property Bylaw." In general, the new by-law prohibits the rental of dwelling units until the property has been registered and a rental permit has been issued by the Town's Principal Code Official. *See* Section 2 of the by-law. In addition, the by-law imposes self-inspection requirements on owners of rental properties; requires certain information to be provided to tenants; limits occupancy requirements to the requirements imposed under the Town's zoning by-laws and state law; and requires parking and access to comply with the standards in the Town's zoning by-laws.

## **I. Attorney General's Standard of Review.**

We acknowledge the letters and emails sent to our Office opposing the amendments adopted under Article 29. While we cannot conclude that any of these arguments furnish a basis for disapproval of the by-law, these letters and materials have aided our review. Pursuant to G.L. c. 40, § 32, the Attorney General has a limited power of disapproval with every "presumption made in favor of the validity of municipal by-laws." *Amherst v. Attorney General*, 398 Mass. 793, 796 (1986). In order to disapprove any portion of a by-law, the Attorney General

must cite an inconsistency between the by-law adopted by the Town and the Constitution or laws of the Commonwealth. Amherst, 398 Mass. at 796.

When reviewing by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. Because the adoption of a by-law by the voters at Town Meeting is both the exercise of the Town's police power and a legislative act, the vote carries a "strong presumption of validity." Id. at 51. "If the reasonableness of a . . . bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Durand, 440 Mass. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)).

## **II. Comments on Specific Sections of the By-law.**

### **A. Section 6 "Registration & Permitting".**

Section 6 governs registration and permitting as follows:

a. Application Process and Requirements. Registration and rental permit applications shall be made on forms approved by the Town, and shall provide such information as the Principal Code Official shall deem reasonable and appropriate. Completed applications shall be submitted to the *appropriate Town office*. Complete rental permit applications shall be reviewed and permits shall be issued within fourteen (14) working days from the date of submission. Except as may otherwise be permitted by the Code Official, a rental permit application shall identify the total number of rental units on the property.

Section 6 provides that the completed registration and rental permit application shall be submitted to the "appropriate Town office." However, according to Section 2 of the by-law, it is the Principal Code Official who issues the rental permit. In addition the third sentence of Section 6 provides that the rental permit application shall be reviewed and acted on within fourteen days from the date of submission, but Section 6 is silent on which officer will issue the permit. Finally, Section 6 establishes that the rental permit application shall identify the total number of rental units on the property except as permitted by the "Code Official" Because the Principal Code Official issues the rental permit, the Town may wish to amend Section 6 to make it clear that (1) the registration and rental application is filed with the Principal Code Official; (2) the Principal Code Official reviews and acts on the application; and (3) any exemption from the requirement of listing the number of rental units should come from the Principal Code Official.

### **B. Section 7 "Inspections & Complaints" and Section 8 "Tenant Information".**

Section 7 (a) (1) (d) requires certain information to be included in the lease agreement, "[s]ubject to and as limited by the Constitution of the Commonwealth." Specifically, Section 7 (a) (1) provides as follows:

Leases Terms. Subject to and as limited by the Constitution of the Commonwealth, a provision requiring tenants to agree to provide reasonable access to the owner(s) or management company shall be a feature of any lease for a rental unit or property permitted under this bylaw. Where no lease is used, the owner(s) or their lawful

representatives shall provide documentation demonstrating that they have made all tenants aware of the Town of Amherst rental bylaw and inspection system. All leases shall provide an acknowledgment that all tenants have been made aware of these requirements.

In addition, Section 8 requires owners to distribute to each new tenant and existing tenants an information sheet provided by the Town describing key local and state laws and regulations applying to rental properties.

We have considered the argument whether these provisions violate the prohibition against regulation of a private civil relationship. The Home Rule Amendment, Mass. Const. amend. art. 2 (as amended by amend. art. 89), provides generally, “[a]ny city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court[.]” *Id.* § 6. However, “[n]othing in this article shall be deemed to grant to any city or town the power . . . (5) to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power[.]” *Id.* § 7(5). The Supreme Judicial Court first interpreted the meaning of the “private or civil law” clause in Marshal House, Inc. v. Rent Review and Grievance Board of Brookline, 357 Mass. 709 (1970), where the court held that a by-law enacting a form of rent control was an impermissible private or civil law governing a civil relationship. The court concluded that “[t]he term ‘private or civil law governing civil relationships’ is broad enough to include law controlling ordinary and usual relationships between landlords and tenants.” *Id.* at 716. However, the court stated in Marshal House,

Doubtless, under art. 89, § 6, a town possesses (subject to applicable constitutional provisions and legislation) broad powers to adopt by-laws for the protection of the public health, morals, safety, and general welfare, of a type often referred to as the ‘police’ power. We assume that these broad powers would permit adopting a by-law requiring landlords (so far as legislation does not control the matter) to take particular precautions to protect tenants against injury from fire, badly lighted common passageways, and similar hazards. Such by-laws, although affecting the circumstances of a tenancy, would do so (more clearly than in the case of the present [rent-control] by-law) as an incident to the exercising of a particular aspect of the police power.

Marshal House, 357 Mass. at 717-18. To be sure, “a municipal civil law regulating a civil relationship is permissible (without prior legislative authorization) only as an incident to the exercise of some *independent*, individual component of the municipal police power.” *Id.* at 718 (with emphasis added).

We approve this text because it is specifically limited: “Subject to and as limited by the Constitution of the Commonwealth. . . .” (Section 7 (a) (1) (d)). However, the Town should discuss the application of the new by-law with Town Counsel in light of the limitation on municipal authority contained in the Home Rule Amendment.

### C. Section 11 “Fees”.

Section 11 authorizes the Select Board to set and periodically revise a schedule of fees

for registration, permit application, and inspection of rental properties. While a municipality may impose fees, it "has no independent power of taxation." Silva v. City of Attleboro, 454 Mass. 165, 169 (2009). In distinguishing valid fees from impermissible taxes, the Supreme Judicial Court has noted that fees tend to share the following common traits: (1) fees, unlike taxes, are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society; (2) user fees (although not necessarily regulatory fees) are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge; and (3) fees are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. See Silva, 454 Mass. at 168 (citing Emerson College v. City of Boston, 391 Mass. 415, 424-25 (1984)). The Select Board may wish to consult with Town Counsel to ensure that its schedule of fees constitute valid fees rather than impermissible taxes.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,  
MARTHA COAKLEY  
ATTORNEY GENERAL

*Kelli E. Gunagan*

By: Kelli E. Gunagan  
Assistant Attorney General  
Municipal Law Unit  
10 Mechanic Street, Suite 301  
Worcester, MA 01608  
(508) 792-7600

cc: Town Counsel Joel Bard

**ARTICLE 30**  
**Form 2 – Submission 2**  
**TOWN MEETING ACTION**

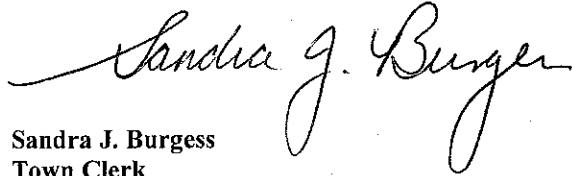
**Article 30. Zoning – Converted Dwellings Standards and Conditions (Planning Board)**

**VOTED** by a declared two-thirds to amend the Standards and Conditions for Section 3.3241, Converted Dwelling, of the Amherst Zoning Bylaw, by deleting the ~~lined-out~~ language and adding the language in ***bold italics***, as follows:

5. 6. The proposed conversion shall be suitably located in the neighborhood in which it is proposed, as deemed appropriate by the ~~Zoning Board of Appeals~~ ***Special Permit Granting Authority***. The conversion, if in a residential district shall either: a) be located in an area that is close to heavily traveled streets, close to business, commercial and educational districts, or already developed for multi-family use and shall require owner-occupancy or a ~~Resident m~~***Manager (see definition)*** in one of the units; or b) be from one to two units, ~~– In both instances one unit of which shall be and shall remain owner-occupied, a requirement which shall be made a condition of any Special Permit issued in such an instance.~~
13. ~~For any converted dwelling use in the R-G, R-VC, R-N, R-O and R-LD districts, the Special Permit Granting Authority shall require as a condition of the granting of a Special Permit the ongoing services of a qualified professional property management company, the presence of a qualified on-site resident manager, or similar provision for appropriate management of the rental use.~~

Action taken 6/3/13

A true copy, Attest:



Sandra J. Burgess  
Town Clerk

Attorney General's Office

BY JOAN M. 2013, Article 20

Date 09/19/2013

own {Mörsen



[www.amherstma.gov](http://www.amherstma.gov)

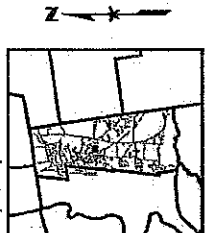
Legend

Horizontal Datum: MA Stateplane Coordinate System,  
Zone 4151, Datum NAD83, Feet.  
Vertical Reference Datum: NAVD-88

Platform: baseasp features complete

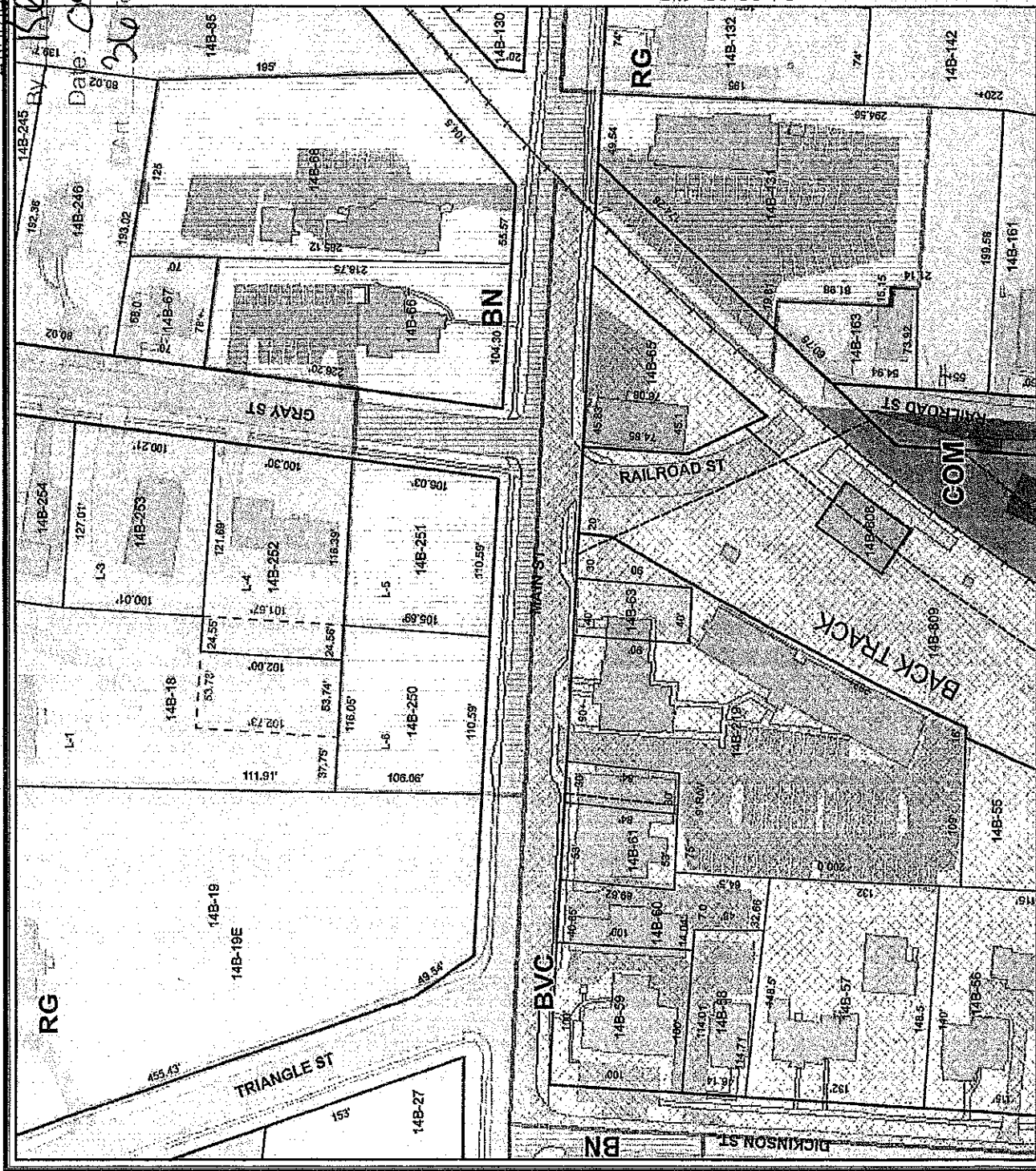
Parcels compiled through a "best-fit" methodology to match the basemap; revisions are ongoing.

### The Town of Amherst and its mapping contractors assume



25 50 100 Feet  
1 inch = 100 feet

Amherst GIS, 6/17/2013



# ATM 2013, Article 36 "Before"



www.amherstma.gov

## Legend

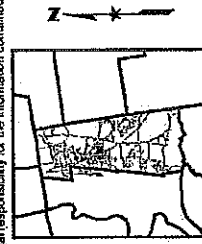
- R-LD: Low Density Residence
- R-F: Fraternity Residence
- R-O: Outlying Residence
- R-N: Neighborhood Residence
- R-VC: Village Center Residence
- R-G: General Residence
- B-L: Limited Business
- B-N: Neighborhood Business
- B-G: General Business
- OP: Office Park
- COM: Commercial
- PRP: Professional & Research Park
- LI: Light Industrial
- ED: Educational
- FPC: Flood-Prone Conservancy

National Datum: MA Stateplane Coordinate System,  
Zone 18N, Datum NAD83, Feet  
Vertical Reference Datum: NAVD-88

Planimetric features compiled at 1"=40'  
scale from April, 2009 Aerial Photography.

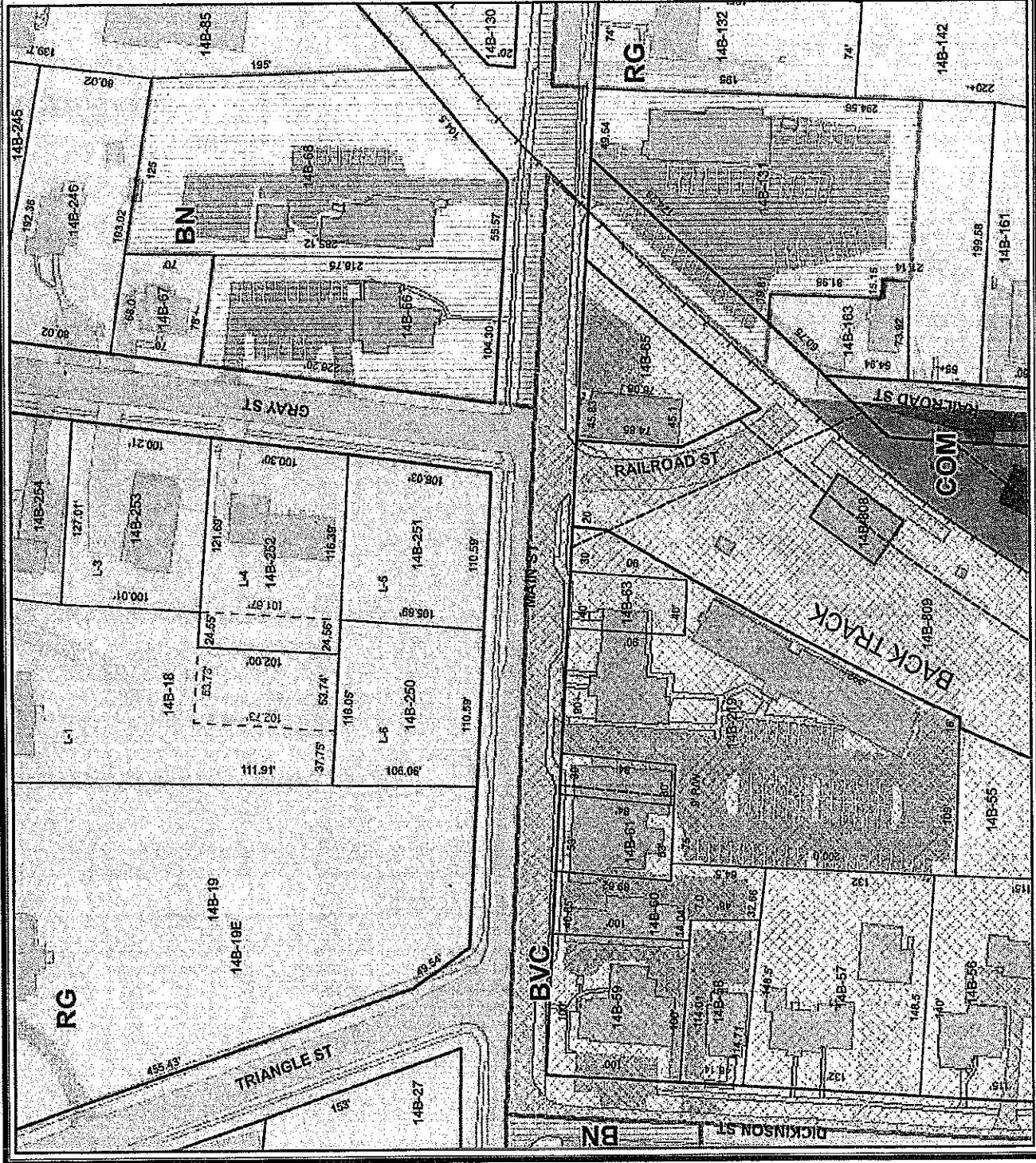
Parcels compiled through a "best fit" methodology to  
match the basemap; revisions are ongoing.

The Town of Amherst and its mapping contractors assume  
no legal responsibility for the information contained herein.



0 25 50 100  
Feet  
1 inch = 100 feet

Amherst GIS, 8/17/2013



**ARTICLE 31**  
**Form 2 – Submission 2**  
**TOWN MEETING ACTION**

**ARTICLE 31. Zoning – Mixed Use Buildings - Standards and Conditions (Planning Board)**

**VOTED Yes 119, No 56** to amend the Standards and Conditions for Section 3.325 of the Zoning Bylaw, by deleting the lined-out language and adding the language in ***bold italics***, as follows:

3.325 Building containing dwelling units in combination with stores or other permitted business or commercial uses

**Standards and Conditions**

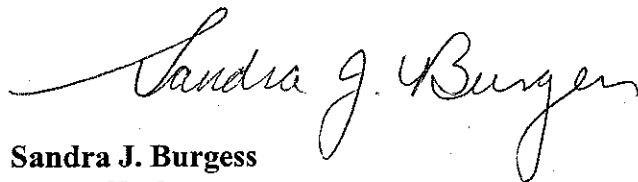
A management plan, as defined in terms of form and content in the Rules and Regulations adopted by the Permit Granting Authority shall be included as an integral part of any application made under this section.

In those Limited Business (B-L) Districts not abutting the B-G District, and in the Commercial (COM) District, a Special Permit from the ***Special P***ermit Granting Authority authorized to act under this section of the bylaw shall be required wherever proposed residential uses above the first floor exceed ~~1) a total GFA greater than twice~~ the area devoted to commercial uses, or 2) a total GFA greater than six thousand (6000) square feet, or 3) ~~six (6)~~ ***ten (10)*** dwelling units. The proposed use shall meet the criteria of Section 10.38 or Section 11.24, as applicable, with respect to the site and potential conflicts between the residential and commercial use(s).

In the Commercial (COM) District, ~~there shall be no dwelling units nor~~ ***any internal space associated with a dwelling unit shall occupy any first floor portion of a building facing onto a street, public place, or other space customarily used by the public*** dwelling units, nor portions thereof other than entries thereto as required, on the first floor. ***First floor residential dwelling units, and any required entries thereto, shall be located on the rear of buildings, adjacent to any required parking and private open space associated with and serving those units.*** No more than ten percent (10%) ~~forty percent (40%)~~ of the gross floor area on the first floor ***Gross Floor Area (GFA)*** shall be used for residential purposes, which shall include not more than fifteen percent (15%) of said GFA associated with or incidental to, whether for storage, required entries, stair/elevator towers, or other purposes, the ~~any~~ residential uses on upper floors.

Action taken 6/3/13

**A true copy, Attest:**



**Sandra J. Burgess**  
**Town Clerk**



**ARTICLE 32**  
**Form 2 – Submission 2**  
**TOWN MEETING ACTION**

**ARTICLE 32. Zoning – Mixed Use Center Dimensions (Planning Board)**

To see if the Town will amend Article 6, Table 3, Dimensional Regulations and its Footnotes, and Section 6.19 of the Zoning Bylaw with respect to dimensional requirements for the Limited Business (B-L), Commercial (COM), Village Center Business (B-VC), and General Business (B-G) districts, as follows:

A motion was made to divide Article 32 to consider A1 and A2, A3, and B as separate motions

**DEFEATED Yes 110, No 67**

(A1. Amend Table 3 by replacing existing dimensional requirements for the B-L and COM districts by adding the language in ***bold italics***, as follows:

	<b>B-L/COM</b>	
	<b><u>Existing</u></b>	<b><u>Proposed</u></b>
Basic Minimum Lot Area (sq. ft.) <sup>h</sup>	20,000 <sup>b</sup>	<b><i>15,000<sup>b</sup></i></b>
Additional Lot Area/Family (sq. ft.)	4,000	<b><i>2,500<sup>ab</sup></i></b>
Basic Minimum Lot Frontage(ft.)	125 <sup>b</sup>	<b><i>60<sup>b</sup></i></b>
Basic Minimum/ <b><i>Maximum</i></b> Front Setback (ft.) <sup>am</sup>	20	<b><i>10 minimum</i></b> <b><i>30 maximum</i></b>
Basic Minimum Side and Rear Yards (ft.) <sup>g</sup>	25 <sup>a</sup>	25 <sup>a</sup>
Maximum Building Coverage (%)	35	35 <sup>a</sup>
Maximum Lot Coverage (%) <sup>o</sup>	70/85 <sup>j</sup>	70/85 <sup>aj</sup>
Maximum Floors <sup>a</sup>	3	3
<b><i>Minimum</i></b> /Maximum Height (ft.) <sup>am</sup>	35	<b><i>16 minimum</i></b> <b><i>40 maximum</i></b>

A2. Amend Table 3 Footnotes b. and n. by deleting the lined-out language and adding the language in ***bold italics***, as follows:

- a. Requirement may be modified under a Special Permit, issued by the Special Permit Granting Authority authorized to act under the applicable section of this bylaw. In applying the criteria established in Section 10.395, the Special Permit Granting Authority shall consider the proposed modified dimensional requirement in the context of the pattern(s) of the same dimensions established by existing buildings and landscape features in the surrounding neighborhood. [No amendment, included for informational purposes]
- b. Applies to Residence Uses only (Section 3.32). In the B-G, ***B-L***, B-VC, and B-N, ***and COM*** districts, the Basic Minimum Lot Area shall apply only to the first dwelling unit on the ground floor of subdividable dwellings and converted dwellings. For townhouses, apartments, buildings containing dwelling units in combination with stores or other permitted commercial uses, and other permitted multi-unit residential uses in these districts, the Basic Minimum Lot Area, Additional Lot Area/Family, and Basic Minimum Lot Frontage requirements shall not apply.
- c. Applies to any part of a building which is within 200 feet of the side boundary of a Residence District abutting on the same street within the same block; otherwise, no front setback is required. [No amendment, included for informational purposes]
- e. Rear and side yards shall be at least 20 feet when the affected property is adjoining a Residence District. Otherwise, rear and side yards are not required, but if provided shall be at least 10 feet. [No amendment, included for informational purposes]
- h. A buildable lot shall contain either 90% of its total lot area, or 20,000 square feet, in contiguous upland acreage. [No amendment, included for informational purposes]
- j. 85% in any B-L District adjacent to the B-G District, and along University Drive; 70% in any other B-L District and in the COM District. [No amendment, included for informational purposes]
- n. ***Where only a single figure is shown, it represents the minimum front setback or the maximum height, as applicable.*** See Section 6.19 for interpretation.

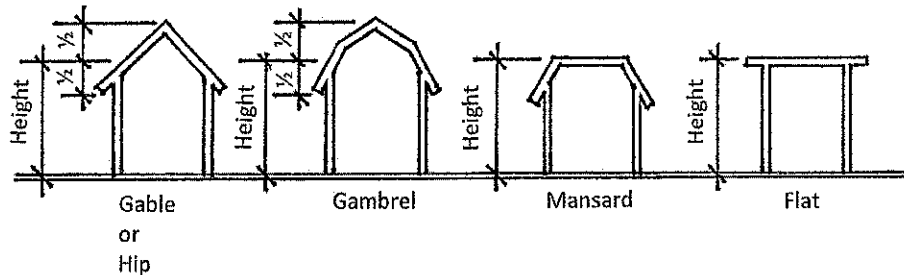
o. See Section 6.18. [No amendment, included for informational purposes])  
Action taken 6/10/13

A3.

**VOTED** by a declared two-thirds to amend Section 6.19 by deleting the lined-out language, adding the language in ***bold italics***, and adding a new graphic illustration for building height, as follows:

## 6.19 *Minimum and Maximum Height*

*In all districts, ~~the~~ the ***minimum or maximum*** height of a building shall be measured ***as the vertical distance*** from the highest point of any roof or parapet to the average finished grade on the street side of the structure ***to the highest point of the roof for flat roofs, to the deck line for mansard roofs, and to the average height (midpoint) between the highest eaves and ridge of the main body of the roof for gable, hip, shed, saltbox, and gambrel roofs, or combinations thereof.****



Section 6.19 – Building Height

*In the B-G, B-L, B-VC, B-N, COM, and R-VC districts, the maximum height of buildings may be modified under a Special Permit granted by the Special Permit Granting Authority authorized to act under the provisions of this bylaw for compelling reasons of building function, utility, or design, including but not limited to allowing construction of the full number of maximum floors under difficult site conditions such as steep grades, or with a pitched roof design, or similar conditions. In granting any such modification, the Special Permit Granting Authority shall consider the patterns of height and roof styles established by existing buildings, structures, and landscape features in the surrounding area, and provided that in no case shall the height of any exterior face of a building exceed the permitted height by more than ten (10) feet.*

Height limitations shall not apply to chimneys, spires, cupolas, TV antennae and other parts of buildings or structures not intended for human occupancy. Towers, antennae, panels, dishes and other such structures attached to a building in association with commercial and public wireless communication uses shall not exceed the maximum height of said building, as above defined, by more than ten feet. Related electronic equipment and equipment structures shall not exceed the maximum height. For towers and other such free-standing structures associated with wireless communications uses, the provisions of Section 3.340.2 shall apply and prevail.

Action taken 6/10/13

**A true copy, Attest:**

*Sandra J. Burgess*

**Sandra J. Burgess**  
**Town Clerk**

B.

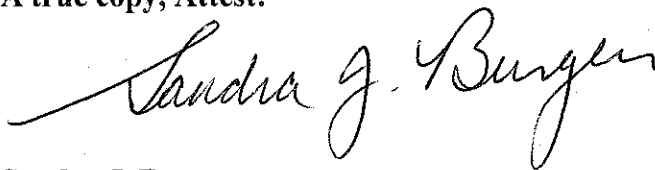
**VOTED Yes 121, No 53** to amend Table 3, including replacement of existing dimensional requirements for the B-VC District as shown in ***bold italics***:

	<u>Existing</u>	<b>B-VC</b> <u>Proposed</u>
Basic Minimum Lot Area (sq. ft.) <sup>h</sup>	15,000 <sup>b</sup>	<b><i>12,000<sup>b</sup></i></b>
Additional Lot Area/Family (sq. ft.)	2,500 <sup>ab</sup>	<b><i>2,500<sup>ab</sup></i></b>
Basic Minimum Lot Frontage (ft.)	100 <sup>b</sup>	<b><i>60<sup>b</sup></i></b>
Basic Minimum/ <b><i>Maximum</i></b> Front Setback (ft.) <sup>an</sup>	10 <sup>a</sup>	<b><i>10 minimum 20 maximum</i></b>
Basic Minimum Side and Rear Yards (ft.) <sup>g</sup>	25 <sup>a</sup>	<b><i>10<sup>a</sup></i></b>
Maximum Building Coverage(%)	35	<b><i>35<sup>a</sup></i></b>
Maximum Lot Coverage (%) <sup>o</sup>	65 <sup>a</sup>	<b><i>65<sup>a</sup></i></b>
Maximum Floors <sup>a</sup>	3	<b><i>3</i></b>
<b><i>Minimum</i></b> /Maximum Height (ft.) <sup>an</sup>	40	<b><i>16 minimum 40 maximum</i></b>

**Amend Table 3, including replacement of existing dimensional requirements for the B-G District as shown in ***bold italics***:**

	<u>Existing</u>	<b>B-G</b> <u>Proposed</u>
Basic Minimum Lot Area (sq. ft.) <sup>h</sup>	12,000 <sup>b</sup>	<b><i>12,000<sup>b</sup></i></b>
Additional Lot Area/Family (sq. ft.)	1,250 <sup>ab</sup>	<b><i>1,250<sup>ab</sup></i></b>
Basic Minimum Lot Frontage (ft.)	100 <sup>b</sup>	<b><i>40<sup>b</sup></i></b>
Basic Minimum/ <b><i>Maximum</i></b> Front Setback (ft.) <sup>an</sup>	20 <sup>c</sup>	<b><i>0 minimum 20 maximum</i></b>
Basic Minimum Side and Rear Yards (ft.) <sup>g</sup>	e	<b><i>10<sup>ae</sup></i></b>
Maximum Building Coverage (%)	70 <sup>a</sup>	<b><i>70<sup>a</sup></i></b>
Maximum Lot Coverage (%) <sup>o</sup>	95 <sup>a</sup>	<b><i>95<sup>a</sup></i></b>
Maximum Floors <sup>a</sup>	4	<b><i>5</i></b>
<b><i>Minimum</i></b> /Maximum Height (ft.) <sup>an</sup>	50	<b><i>55</i></b>
Action taken 6/10/13		

A true copy, Attest:



Sandra J. Burgess  
Town Clerk

ARTICLE 33  
Form 2 – Submission 2  
TOWN MEETING ACTION

**ARTICLE 33. Zoning – Non-Conforming Uses and Structures (Planning Board)**

**VOTED** by a declared two-thirds to amend Section 9.2, Non-Conforming Uses and Structures, by deleting the ~~lined-out~~ language and adding the language in *bold italics*, as follows:

**A. Amend Section 9.20 by adding new Sections 9.201 and 9.202, as follows:**

9.20 Any lawful building or structure, or use of a building, structure or land, existing at the time of adoption of this Bylaw or any amendment thereto which does not conform to the regulations thereof may be continued. However, except as hereinafter set forth, a non-conforming building or structure shall not be structurally altered, enlarged, nor reconstructed so as to increase its non-conformity under this bylaw. *For the purposes of this section, a structural alteration shall be any change to the exterior of a building or other structure which involves alteration, relocation, enlargement, or reconstruction of walls or other significant elements of the building or structure.*

9.200 Under Section 11.1, the Building Commissioner may permit the repair, alteration, reconstruction, extension or structural ~~change~~ *alteration* of a lawful, dimensionally non-conforming single family or two family dwelling *in any zoning district or a lawful, dimensionally non-conforming building in the B-G, B-VC, B-N, B-L or COM districts, or in either circumstance*, a portion thereof, or accessory structures thereto, provided the proposed change does not constitute a change of use under this Bylaw, and at least one of the following conditions is met:

9.2000 In the case of a building non-conforming solely because of insufficient lot frontage or lot area, or both, the proposed change shall meet all dimensional requirements for front setback, side and rear yards, building coverage, lot coverage, maximum floors and maximum height.

9.2001 In the case of a dimensionally non-conforming building with sufficient lot frontage and lot area, where said building, or a portion thereof, is non-conforming as to one or more of the dimensional requirements for front setback, side and rear yards, building coverage, lot coverage, maximum floors or maximum height, all dimensional requirements met by the building prior to the proposed change shall be met after completion of the proposed change.

9.2002 In the case of a building non-conforming as to lot frontage and/or lot area, and nonconforming as to one or more of the dimensional requirements for front setback, side and rear yards, building coverage, lot coverage, maximum floors or maximum height, all dimensional requirements met by the building prior to the proposed change shall be met after completion of the proposed change.

9.201 *Where a new or expanded existing conforming use is proposed in an existing lawful dimensionally non-conforming building, and no exterior alteration, reconstruction, extension or structural alteration will occur, the permit requirements of Section 3.3 shall apply but no additional Special Permit under Section 9.22 shall be required for the proposed use.*

**B. Amend Section 9.22, as follows:**

- 9.22 The Board of Appeals may authorize *Special Permit Granting Authority authorized to act under the provisions of Section 3.3 of this bylaw may*, under a Special Permit, allow a non-conforming use of a building, structure or land to be changed to a specified use not substantially different in character or in its effect on the neighborhood or on property in the vicinity. Said Board *Authority* may also authorize, under a Special Permit, a non-conforming use of a building, structure, or land to be extended, or a non-conforming building to be structurally altered, enlarged or reconstructed; provided that *the Authority finds that* such alteration, enlargement, or reconstruction shall not be substantially more detrimental to the neighborhood than the existing non-conforming use or non-conforming building.

Action taken 6/10/13

A true copy, Attest:

A handwritten signature in cursive script, reading "Sandra J. Burgess". The signature is written in black ink and is positioned above the printed name and title.

Sandra J. Burgess  
Town Clerk

**ARTICLE 34**  
**Form 2 – Submission 2**  
**TOWN MEETING ACTION**

**ARTICLE 34. Zoning – R-F District Dimensions (Planning Board)**

**VOTED by a declared two-thirds** to amend Table 3, Dimensional Regulations, by adding Footnote a. to the following dimensions in the Fraternity Residence (R-F) District:

	<u><b>R-F</b></u>	
Basic Minimum Lot Area (sq. ft.) <sup>b</sup>	40,000	
Additional Lot Area/Family (sq. ft.)	-----	
Basic Minimum Lot Frontage (ft.)	150	
Basic Minimum Front Setback (ft.) <sup>a</sup>	25	
Basic Minimum Side and Rear Yards (ft.) <sup>g</sup>	20	
Maximum Building Coverage (%)	20 <sup>a</sup>	←
Maximum Lot Coverage (%) <sup>o</sup>	45 <sup>a</sup>	←
Maximum Floors <sup>a</sup>	3	
Maximum Height (ft.) <sup>n</sup>	40 <sup>a</sup>	←

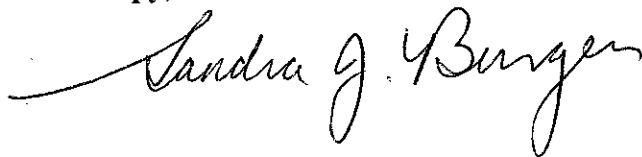
\*\*\*\*\*

[Included for informational purposes]

- a. Requirement may be modified under a Special Permit, issued by the Special Permit Granting Authority authorized to act under the applicable section of this bylaw. In applying the criteria established in Section 10.395, the Special Permit Granting Authority shall consider the proposed modified dimensional requirement in the context of the pattern(s) of the same dimensions established by existing buildings and landscape features in the surrounding neighborhood.

Action taken 6/10/13

**A true copy, Attest:**



**Sandra J. Burgess**  
**Town Clerk**

**ARTICLE 35**  
**Form 2 – Submission 2**  
**TOWN MEETING ACTION**

**ARTICLE 35. Zoning – Locational Requirements for Non-Conforming Structures in Mixed Use Centers (Planning Board)**

**VOTED Yes 107, No 49** to amend Article 9, Non-Conforming Lots, Uses and Structures, by adding the following new Section 9.3:

**SECTION 9.3                      LOCATIONAL REQUIREMENTS IN MIXED USE CENTERS**

**9.30 Purpose**

The purpose of this section is to establish regulations for the location of new additions or enlargements to non-conforming uses and structures, or the creation of separate buildings on the same lot as non-conforming uses and structures in the B-G, B-L, B-VC, B-N and COM Districts. These regulations are intended to promote sound design, enhance the creation of pedestrian-friendly streetscapes and spaces, and foster more functional and successful mixed use properties. Where the provisions of this section conflict with Section 9.1 and 9.2 of this Article, this section shall apply and prevail.

**9.31 Non-conforming Structures**

9.310 Enlargements, Repairs, or Alterations – Non-conforming structures may be permitted to be enlarged, extended, reconstructed, repaired or altered by the Permit Granting Board or Special Permit Granting Authority in conformance with the provisions of Section 9.2 provided, however, that any such enlargement, extension, reconstruction, repair or alteration shall conform to the locational regulations established herein.

9.311 Permitted Additions – Where a non-conforming structure is being expanded under Section 9.310, the addition shall abide by the following requirements:

9.3110 Front and Rear Additions – Any addition in front of an existing building shall be placed such that its front façade is set at or within the front setback area established by the minimum and maximum front setback. Rear additions may only be undertaken simultaneously with front or side additions, and only where the rear extension is not increasing the degree of existing nonconformity.

9.3111 Side Additions for Buildings Located Within the Front Setback Area – For an existing building located at the front setback, any side addition shall also be located at or within the front setback area.

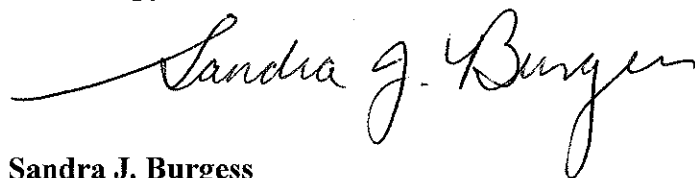
9.3112 Side Additions for Buildings Located Outside of the Front Setback Area – For an existing building located at the rear edge or behind the front setback area, any side addition shall be extended forward such that its front façade is located at or within the front setback area.

9.312 Permitted New Buildings – The front facades of all separate new buildings being constructed on a site with an existing non-conforming structure shall be located at or within the front setback area.

9.313 Modification or Waiver – Any provision of this section may be modified or waived by the Special Permit Granting Authority authorized to act under the applicable section of this Bylaw for compelling reasons of safety, aesthetics, sustainable site design, or historic or environmental preservation needs which serve the purposes of this section.

Action taken on 6/10/13

**A true copy, Attest:**



**Sandra J. Burgess**  
**Town Clerk**

**ARTICLE 36**  
**Form 2 – Submission 2**  
**TOWN MEETING ACTION**

**ARTICLE 36. Zoning Petition – Amend Official Zoning Map to Change Zoning Designation on Parcels**  
**14B-250 and 14B-251 from (R-G) to (B-N) (Guidera et al)**

**VOTED Yes 120, No 55** to amend the Official Zoning Map to change the zoning designation on Assessor's parcels  
14B-250 and 14B-251 from General Residence (R-G) to Neighborhood Business (B-N).  
Action taken 5/22/13

**A true copy, Attest:**

A handwritten signature in cursive script that reads "Sandra J. Burgess". The signature is written in black ink and is positioned above the printed name and title of the signatory.

**Sandra J. Burgess**  
**Town Clerk**



Town of



# Amherst Massachusetts

TOWN CLERK

Sandra J. Burgess, Town Clerk  
Town Hall  
4 Boltwood Avenue  
Amherst, MA 0100

Phone: (413) 259-3035  
Fax: (413) 259-2499  
townclerk@amherstma.gov  
www.amherstma.gov

## **BYLAW APPROVAL** **BY STATE ATTORNEY GENERAL**

I, Sandra J. Burgess, Town Clerk of Amherst, Massachusetts certify that the attached is a true copy of the amendments to the Zoning Bylaws adopted under Articles 30, 31, 32 (A3), 32(B), 33, 34, 35, and 36, and Article 29 of the General Bylaws, of the warrant for the Annual Town Meeting that convened May 6, 2013, with the approval of the Attorney General of Massachusetts, herewith.

Attest:

Sandra J. Burgess  
Town Clerk  
September 20, 2013

Any claims of invalidity in the case of Zoning Bylaws by reason of any defect in the foregoing procedure of adoption may only be made within 90 days of the posting of this notice.

Date posted Sept 24, 2013

On the above date written I have posted copies of the bylaw amendments passed at the May 6, 2013, Annual Town Meeting and approved by the Attorney General of Massachusetts on September 19, 2013, at the following places in town:

Precinct 1	North Amherst Post Office	Precinct 6	Fort River School
Precinct 2	North Fire Station	Precinct 7	Crocker Farm School
Precinct 3	Immanuel Lutheran Church	Precinct 8	Munson Memorial Library
Precinct 4	Amherst Post Office	Precinct 9	Wildwood School
Precinct 5	Town Hall	Precinct 10	Campus Center, UMass

  
Constable, Town of Amherst

Town of



# AMHERST Massachusetts

TOWN HALL  
4 BOLTWOOD AVENUE  
AMHERST, MA 01002-2301

TOWN CLERK  
(413) 259-3035  
Email: townclerk@amherstma.gov

Date posted Sept 24, 2013

On the above date written I have posted copies of the bylaw amendments passed at the May 6, 2013 Annual Town Meeting and approved by the Attorney General of Massachusetts on September 19, 2013, at the following places in town:

Precinct 1 North Amherst Post Office  
Precinct 2 North Fire Station  
Precinct 3 Immanuel Lutheran Church  
Precinct 4 Amherst Post Office  
Precinct 5 Town Hall

Precinct 6 Fort River School  
Precinct 7 Crocker Farm School  
Precinct 8 Munson Memorial Library  
Precinct 9 Wildwood School  
Precinct 10 Campus Center, UMass

  
Constable, Town of Amherst

